

NEW YORK STATE PUBLIC SERVICE COMMISSION

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PUBLIC SESSION

of the

PUBLIC SERVICE COMMISSION

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Held at the offices of the Commission,  
One Penn Plaza, New York, New York.

Wednesday, the 23rd of May, 2001

1:00 p.m.

PRESIDING: MAUREEN O. HELMER, Chairman

**PRESENT:      THOMAS J. DUNLEAVY, Commissioner**

**LEONARD A. WEISS, Commissioner**

**JAMES D. BENNETT, Commissioner**

**NEAL N. GALVIN, Commissioner**

## D I S C L A I M E R

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## P R O C E E D I N G S

. THE CHAIRPERSON: This session  
will  
come to order.

Madam Secretary, any changes to the  
agenda?

MS. DEIXLER: Yes, Chairman  
Helmer,  
there are two.

Item 263, Case 01M0353, New York  
State Electric and Gas Corporation, a  
petition for approval of transfer is over.  
As is Item 566, Case 99C1500, Verizon New  
York, petition for waiver of certain  
performance results for September 1999.

THE CHAIRPERSON: Thank you very  
much.

Are there any comments or questions  
about the consent agenda?

There being none, all in favor of  
the  
items, please say "Aye."

(Chorus of "Ayes.")

THE CHAIRPERSON: All opposed?

(No response.)

THE CHAIRPERSON: The  
recommendations are adopted.

Item 101, Phil?

MR. TEUMIM: Thank you, Madam  
Chairman. Good afternoon, Commissioners.

This item is a proposed response to  
a  
petition by a local of the United Steel  
Workers Union which asks the Commission to  
investigate the high prices for natural gas  
that we have experienced over the past  
winter.

In fact, the staff has been  
following  
very closely these prices over the winter  
season, and this was the subject of  
testimony by Ron Zerniglia and me at an  
Assembly hearing in Buffalo earlier this  
month.

Briefly, the delivery rate portion  
of  
the bill, subject to Commission regulation,  
has been frozen or declining for the past  
five years. The pipeline portion of the  
bill regulated by FERC has also been pretty

well flat. The commodity portion, which is subject to national and international market forces was the cause of the price spikes.

The Commission does not regulate those prices but took action to mitigate the spikes where possible by accelerating gas adjustment clause refunds from a full year to the winter or the remainder of the winter by deferring recovery of GAC undercollections, by returning any customer monies that the utilities may have been holding, by accelerating the effects of rate decreases, by supplementing low-income programs and through an extensive statewide outreach program.

The actions that I have listed did not apply across the board to all utilities but certain of them apply to various utilities. And we would propose sending copies of the testimony to the union to respond to the petition.

THE CHAIRPERSON: Thank you very much, Phil.

Are there any comments on this

item?

Just to reiterate Phil's comments, the Commission has done a great deal over the winter in preparation for the winter for what was anticipated in terms of natural gas prices. And we will, obviously, continue to do what is within our jurisdiction to deal with these issues.

And, Phil, obviously, your folks will also continue to deal with the FERC and to watch what they do and to see what can be done by the Commission in intervening at proceedings down at the FERC with respect to gas prices, but I think that the recommendations on this item as to how to address this petition are appropriate.

All in favor of the recommendations, please say "Aye."

(Chorus of "Ayes.")

THE CHAIRPERSON: All opposed?

(No response.)

THE CHAIRPERSON: The recommendations are adopted.

Item 301, Paul?

MR. POWERS: Thank you, Chairman.

As part of your effort to ensure that adequate supplies of electricity will be available at reasonable prices over the next several years, the Commission last December ordered the six major electric utilities to file initiatives to accelerate the implementation of interval metering, real-time pricing options and detailed public awareness and education plans.

It also required Con Edison to file a proposal for controlled load management for smaller customers.

Item 301 describes the utility filings and makes recommendations for the Commission's action on these proposals. Limited comments were received, and with the exception of one comment described below, are consistent with staff's recommendations.

Let me first take up interval meters.

Utilities have all, with the exception of Central Hudson, submitted proposals to increase the use of interval meters, which measure and store energy usage data for time periods ranging from 15 minutes to one hour. Such meters are necessary to enable customers to react to real-time price signals decreasing usage on peak and lowering market prices.

The Commission has already approved Con Ed's tariff. The staff recommends that the other five utility tariffs which were limited in application be amended to comport with Con Edison's. All utilities would then participate in and promote NYSERTA's incentive program for the purchase of these meters.

The staff also recommends that the utilities expand the program applicability to all commercial and industrial customers, not just the limited few that would have applied -- only applied under the original proposal.

As far as public awareness and education, the Commission ordered all the

electric utilities to provide staff with their detailed public awareness and education programs which would be used to educate customers about the supply-demand situation and about the actions that customers can take to respond to that situation.

The Commission approved Con Ed's program in March. Following a meeting of all the utilities in April at which the utilities share their plans, the staff requested additional information on specific activities to promote peak demand reduction programs to commercial and industrial customers. While many of the utilities' plans included similar strategies for targeting and educating customers, the staff encourages the utilities to adopt best practices emerging from a comparison of each of these plans.

The staff then recommends the Commission approve these plans as filed but that also the companies file copies of their awareness and education materials with the Department. And, finally, that

they file an evaluation of the effectiveness of these plans by October 31st.

As for real-time pricing, in its December Order, the Commission directed the utilities to file a real-time pricing tariff for commercial and industrial customers. Again, Con Edison's real-time pricing tariff has already been approved.

Also, Niagara Mohawk already has a real-time pricing program for its largest customers in place, and they plan to extend that program to other large customers as part of their power choice plan.

With the exception of Central Hudson, the other utilities citing concerns over adapting their billing systems to real-time pricing follow very limited programs targeted to only their largest customers. The staff recommends that these utilities, that is, NYSEG, Orange and Rockland, and Rochester Gas and Electric, be directed to file plans within 60 days to describe how they can expand the applicability of

real-time price offerings to all their commercial and industrial customers before next summer.

Until then, staff recommends that the utilities' tariffs be approved as filed with modifications to NYSEG's and RG&E's methodologies or including real-time pricing in their bundled rate.

We did get one comment on these filings. A Con Ed solution maintains that charging day-ahead prices for real-time consumption creates risks for low-serving entities. They recommended that real-time prices be charged instead.

The staff counters that charging real-time prices to customers transfers the risk to customers and that they won't be able to respond quickly enough to variations between the day-ahead prices and the real-time prices. Therefore, the staff recommends that Con Ed's solution request be denied.

Finally, with regard to Con Ed's direct load program, Con Ed's original

proposal called for a direct load control program for small commercial customers, multi-family residential buildings with central air-conditioning and smaller residential customers with central air-conditioning. After discussions with the staff, Con Edison has revised its program to target 500 small businesses and residential customers in selected geographic areas. And they want to use a competitive solicitation to select an outside project manager. This will enable us to test different vendor technologies and will provide information on how best to redesign the programs for next summer so we can get more aggressive in 2002.

The staff recommends approval of the program that they come in with as amended.

THE CHAIRPERSON: Thank you, Paul.

The interval meter issue and the time-of-day pricing issue are issues that the Department's been pursuing for quite some time, originally, I think, to advance innovation in the retail markets and to

allow that kind of innovation that I think we are all hoping for.

At this point, though, I think we are also realizing the impact that demand-side response can have on wholesale prices, and these are two more pieces, very important pieces of the infrastructure that are needed to allow for a demand-side response in the industrial business and consumer markets. So I am glad we are moving ahead on this.

I am glad that NYSERTA, with use of the SBC funds that were allocated through this Commission, are going to be paying a substantial amount for these meters and making them very economical, very economical for customers to buy. I think 75 percent, Paul, of the price --

MR. POWERS: That's right.

THE CHAIRPERSON: -- is being paid for through the SBC program.

So at the same time that these prices are coming down, a substantial amount will

be essentially paid for through the SBC,  
and I think that will really help to move  
these measures.

As you pointed out, the real hope  
is  
to get these programs aggressively in place  
by next summer, but it sounds like we have  
a good foothold towards having a good  
amount of this available this summer as  
well, and I am pleased to hear that.

I do have some residual concerns,  
as  
you reflected, being raised by Con Ed's  
solutions about the day-ahead versus  
real-time pricing, but I think the balance  
here is the correct one. First of all, a  
customer can't respond to a price he or she  
doesn't know, and, second of all, people  
are purchasing in the day-ahead market for  
the most part.

Is that correct, Paul?

MR. POWERS: Yes, that's right.

The  
utility programs right now are designed for  
purchases in the day-ahead market.

To the extent that a customer's usage varies, that's where the imbalance comes from. But until we see a lot more automation in customer usage so that you could kind of instantaneously react to real-time pricing, we don't see that in place this year, but it could be evolving within the next several years. We feel that right now it is better for customers to be able to get that day-ahead price and be able to plan the next day's electricity usage accordingly.

THE CHAIRPERSON: Thank you, Paul.

THE CHAIRPERSON: Any other comments or questions?

COMMISSIONER DUNLEAVY: I'm sorry if I missed it. In the reporting, the company, are you just talking about Con Ed or all the companies filing evaluation of the plans?

MR. POWERS: All the companies with

the exception of Con Ed.

COMMISSIONER DUNLEAVY: Okay,  
thank  
you.

THE CHAIRPERSON: Any other  
comments  
or questions?

COMMISSIONER BENNETT: I would  
just  
say that I think this is an excellent step  
in the direction of conservation and  
demand-side management.

On the reimbursement of the cost of  
installing meters at a location, I believe  
Chairman Helmer mentioned 75 percent up to  
\$2,000. Is that per customer or per meter,  
assuming a large factory might have 10 or  
20 meters?

MR. POWERS: That's per meter.

THE CHAIRPERSON: Any other  
comments  
or questions on the item?

There being none, all in favor of  
the  
recommendations, please say "Aye."

(Chorus of "Ayes.")

THE CHAIRPERSON: All opposed?

(No response.)

THE CHAIRPERSON: The  
recommendations are adopted.

Item 501, Alan?

MR. BAUSBACK: Yes, this directs  
Verizon to establish billing and service  
installation procedures that will allow  
competitive local exchange companies to  
access to Verizon's house and riser  
facilities in multi-tenant buildings.

House and riser facilities are  
wired  
as are multi-tenant buildings that connect  
outside plant facilities to specific tenant  
spaces. In New York City, most of the  
house and riser facilities are owned by  
Verizon. Under the current Verizon tariff  
regulations, only Verizon technicians are  
permitted to make connections between  
Verizon house and riser facilities and the  
competitors' facilities.

This situation presents material  
problems to facilities' base competitors in

terms of delays in providing service to their customers as well as adding increased cost to the competitor. To explore improvements in the process, the staff facilitated a trial between Verizon and RCN, one of Verizon's competitors, to permit direct access to house and riser facilities without the need for the double dispatch technicians.

In the RCN control buildings, Verizon was given direct access to RCN house and riser facilities and vice versa. The trial ran for approximately eight months with both Verizon and RCN submitting their respective views on the trial results. RCN believes the trial will be a success and urges that the practice be made generally available.

Verizon opposes implementation of the direct access practice, citing concerns over potential service disruptions as well as concerns over activity reporting necessary for billing and other record

keeping. The staff believes the concerns raised by Verizon are valid but readily resolvable and not a barrier to the implementation of the direct access practice.

The memorandum outlines a tentative approach that could be used to address these concerns. The staff recommends that the Commission order Verizon, in conjunction with CLEC interested staff assistants, to develop CLEC procedures to ensure payment and quality workmanship so that all companies may have direct access to house and riser facilities.

Specifically, we recommend that Verizon file a tariff for direct access in no more than 30 days from the date of the Commission order, and that an expedited collaborative process be implemented immediately to resolve the issues raised by Verizon.

We also recommend that in the interim, Verizon be directed to process CLEC requests for direct access on a case-by-case basis.

THE CHAIRPERSON: Thank you, Alan.

Comments or questions?

Tom?

COMMISSIONER DUNLEAVY: Thank you,  
Madam Chairman.

First, I would like to take this opportunity to compliment the parties involved in the trial. In my view, this was a very successful effort. It was successful in spite of the fact that there were some disagreements among the parties. It was successful because no customer lost service during the trial.

Customers were able to get CLEC service more quickly, more readily, and it proves that in an open, competitive market, competitors behaving responsibly can better serve all customers and fulfill their primary obligation of providing timely, reliable access to the public switch network.

And, finally, ultimately this kind of kind of multilateral cooperation will benefit all New Yorkers because it helps

fulfill a promise of universal ubiquitous service, transparently for all of the customers, or potential customers, and that makes for more efficient use of the network. It is a very, very solid business model that all carriers should pay close attention to, in my view.

And, finally, I have long believed that access, open and unfettered, is the logical extension of call location because in the final analysis this is where service is provided, at the customer level. Property owners, landlords and tenants will all benefit from non-discriminatory open access in the house and riser cable, and from reasonable, rational cooperation among and between all of the carriers who provide service.

I characterize this, either correctly or erroneously, as something akin to a conduit condominium. New York City is the global hubbing, hub for telecommunications, not just in New York State, not just in this nation, but in all of North America

and, indeed, the world.

This is, again my characterization, the telecommunications tenderloin. To get involved in it is to be a party to what is a very, very profitable marketplace. I would urge Verizon and all of the interested parties and all of the people who are in this business to seriously consider an open access strategy that promotes competition, serves the purpose of customers in this marketplace, and maintains and sustains New York's preeminent position in global telecommunications.

Thank you.

THE CHAIRPERSON: Any other comments or questions?

COMMISSIONER BENNETT: I would just like to say that I think the staff did a wonderful job on this, but I want to compliment Commissioner Dunleavy on this. I think his explanation or his presentation just now is excellent, but I think a lot of

what we see here is what he has worked on over the years.

In the years that I have been on the Commission, he has this concept of the conduit condominium or the wire condominium so that you don't end up with ten different companies running ten different wires into each apartment building in the city. I think it applies all over the state, but particularly here in the City of New York.

And I think it is very visionary. I like this language, universal, ubiquitous, transparent, but it is true. When you think of the problems of wiring in an apartment building in the city or a commercial building, without this sort of cooperation, there will be no competition. It would be very difficult to have effective competition. So I think it is a very good step, a very good program.

One point that I noticed is open for further collaborative process is setting

standards for workmanship and some form of compensation. And that's equally as important because I always think to my own experience, I can remember years ago before we had cable television and everybody had an antenna on the roof, and if you had an apartment building you had 60 different wires going to 60 different apartments and it was a very bad situation. And one company would go out of business and, all of a sudden, you would have a very confused situation.

I think it is important that there be proper standards for workmanship and some fair compensation to make sure that when companies do tap into a base service to a building or to a line of apartments, that the workmanship is done in the right way and you don't end up with what we know will happen eventually, where somebody goes out of business, goes bankrupt and just walks away. And we don't want to see the overall system damaged because of that.

**THE CHAIRPERSON:** Any other

comments?

COMMISSIONER GALVIN: Jim has just voiced my comments, but I am glad to see that there is a training mechanism in here to make sure that when the building interior is turned over to another carrier and that they have to make cross-connections, that they are well trained in order to make sure that these connections do get placed in a qualified manner and are safe and usable.

That's my only comment.

THE CHAIRPERSON: And, again, as Neal pointed out, I think between Tom and Jim, they really covered the waterfront here, and I would also like to compliment Tom for his involvement in these issues.

There were some allegations in this case, allegations that RCN technicians cut Verizon wires, that Verizon changed their inspector reports and edited them, that they were openly hostile to the trial. And I am very hopeful that these are really transition issues.

I think Tom's point is very good, that there is an environment here where people should be working together, it is mutually advantageous for folks to be working together, with the proper training as Neal pointed out and so forth, to do this well and to do this properly with a diverse work force or a number of diverse work forces.

And I agree, notwithstanding the minor skirmishes, that this has been a success and it should be continued.

And with that, all in favor of the recommendations, please say "Aye."

(Chorus of "Ayes.")

THE CHAIRPERSON: All opposed?

(No response.)

THE CHAIRPERSON: The recommendations are adopted.

And I won't ask for any appendix to that item.

Item 502, Jackie?

JUDGE BRILLING: I brought the appendix.

Thank you. On November 24th of

2000,  
the Commission initiated this proceeding recognizing that special services are critical to the New York State economy, after having received complaints about Verizon's ordering and provisioning of special services.

After many days of meetings with the parties and multiple briefings from them, we recommend generally that the Commission implement incentives to improve provisioning the intrastate circuits and monitor data submitted from both existing matrix and standards and some that were developed in the proceeding.

Specifically, we would recommend that the Commission make findings, based on the record, that Verizon's provisioning performance for special services is significantly below Commission targets; that Verizon treats other carriers less favorably than its end users; and that Verizon remains the dominant provider of

facilities for special services.

We recommend that the Commission modify Verizon's filed tariff revisions to its rebate plan to apply credits for missed installation commitments to carriers as well as retail customers, and that the missed commitment dates be construed as any change in a confirmed due date that Verizon may make.

We recommend three new metrix in addition to the existing ones. The new metrix relate to wholesale ordering and provisioning. Now, let me be clear, we would recommend that these apply immediately to Verizon and that the Commission would issue a notice inviting comment as to whether these should apply to all carriers. And this would be consistent with the newly adopted retail rules in Part record, that Verizon's provisioning performance for special services is significantly below Commission targets; that Verizon treats other carriers less favorably than its end users; and that Verizon remains the dominant provider of

facilities for special services.

We recommend that the Commission modify Verizon's filed tariff revisions to its rebate plan to apply credits for missed installation commitments to carriers as well as retail customers, and that the missed commitment dates be construed as any change in a confirmed due date that Verizon may make.

We recommend three new metrix in addition to the existing ones. The new metrix relate to wholesale ordering and provisioning. Now, let me be clear, we would recommend that these apply immediately to Verizon and that the Commission would issue a notice inviting comment as to whether these should apply to all carriers. And this would be consistent with the newly adopted retail rules in Part 602 and 603 of the Commission's rules and that the data would be reported in that same fashion, that is, by carriers that serve over 500,000 lines.

The Commission should continue to monitor performance as shown in the

reported data, and the staff should work with the FCC to resolve problems identified in this proceeding.

Now, there was consensus achieved as to the type of data that would be helpful to Verizon and all carriers in forecasting demand for these services. Participants agreed to make best efforts to provide the needed data, but Verizon should be directed to provide monthly reports of held orders for basic and special services until service improves.

Finally, all parties agree to use good faith efforts to employ electronic ordering processes for special services and the consensus items should also be adopted.

Thank you.

THE CHAIRPERSON: Thank you, Jackie.

Before I turn to my colleagues for comments or questions, I would just like to compliment you and the parties. This has been a very important effort, as you mentioned, not just for these companies,

but for the economy of the state. And I do have some more comments, but I would like to turn it over to my colleagues first.

Tom?

COMMISSIONER DUNLEAVY: Judge, I have one question.

You indicated that the standards are being going to be imposed on Verizon immediately and that we should issue a request for comments as to all other carriers.

JUDGE BRILLING: Yes.

COMMISSIONER DUNLEAVY: Help me to understand why we should do this, why we should issue an order for a request for comments for all other carriers?

Recognizing the fact that Verizon is the dominant carrier, why don't we just say that they set the standards for all carriers now?

JUDGE BRILLING: Well, because the original order was drafted in respect to Verizon so that SAPA Notice was drafted

that way, so it is in compliance with the State Administrative Procedure.

COMMISSIONER DUNLEAVY: They have not been heard in this process?

JUDGE BRILLING: No, they have been heard. They all participated --

THE CHAIRPERSON: They have been heard on the issue of?

JUDGE BRILLING: Applicability --

THE CHAIRPERSON: To them?

JUDGE BRILLING: To Verizon.

Well, we did discuss in the case, applicability to all carriers but we believe it should be processed through the State Administrative Procedure Act.

MS. RUBIN: Your Honor, this is really a SAPA problem.

JUDGE BRILLING: Okay.

THE CHAIRPERSON: Our favorite statute.

JUDGE BRILLING: So it is a technicality.

THE CHAIRPERSON: Tom, do you have anything else?

COMMISSIONER DUNLEAVY: No.

THE CHAIRPERSON: Any other  
comments?

COMMISSIONER BENNETT: I would  
just  
say that one of the points that caught my  
interest was the difference in delays for  
problems with equipment, where it was 74  
percent for non-Verizon and 94 percent for  
Verizon.

And that really caught my  
attention.  
You know, percentages don't always control,  
but Verizon is the dominant carrier and if  
they are doing 94 on their side and 74  
percent on the other side of the ledger,  
somehow that doesn't seem essentially fair.  
They own the store, so to speak.

THE CHAIRPERSON: I think that's  
the  
point of this item. And I know that there  
is some response from Verizon that they  
recalculated their appointments or they  
reset their appointments, and that's why  
their number is higher than for the other

carriers.

Is it your belief, Jackie, that it is enough to make up the difference between 20 percentage points?

JUDGE BRILLING: I don't think so, no.

THE CHAIRPERSON: Intuitively, it doesn't seem as though it could be, and I think the case for discrimination is pretty clear here.

Even taking Verizon at their word, then essentially the argument is that the service is bad for everyone, so either way we don't have a good situation.

JUDGE BRILLING: It is a question of getting at it objectively.

THE CHAIRPERSON: Objectively. And I think you have done a very good job of getting that information out into something that I think is very objective for us to look at.

As a follow-up, and we will not be

voting on this today, but as follow-up to this item, obviously, one of the things we struggle with here is the jurisdictional line between ourselves and the FCC with respect to these issues. And one of the things that I am going to do today is send a letter to the FCC, to Michael Powell and to the Enforcement Division, and indicate what our findings are with respect to discrimination as well as to the overall provision of service, and ask that the FCC examine this under their authority, but also offer the invitation that if they are able to craft a way to do that with us and essentially have us be their implementers here in New York, we would be very happy to do that as well.

So I would ask the staff as a follow-up to this letter, to be in touch with the FCC and perhaps set up a meeting to discuss how we can do this together. I think what has happened in this proceeding is probably an advance of what is being done almost anywhere in the country, and I think we can bring a lot to the table at

the FCC. And I would ask that we get involved pretty quickly with the FCC to deal with these issues.

MS. RUBIN: I will do that.

THE CHAIRPERSON: Thank you, Penny.

And, again, we will not be voting on this letter, per se.

All in favor of the recommendations in the Item, please say "Aye."

(Chorus of "Ayes.")

THE CHAIRPERSON: All opposed?

(No response.)

THE CHAIRPERSON: The recommendations are adopted.

Madam Secretary, is there any further business coming before the Commission at this time?

MS. DEIXLER: No, there isn't.

That completes today's agenda.

THE CHAIRPERSON: There being none, this session is adjourned.

(Time noted: 1:35 p.m.)

## C E R T I F I C A T E

I, MARGARET EUSTACE, a Shorthand Reporter and notary public within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter on May 23, 2001, and that this is an accurate transcription of what transpired at that time and place.

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MARGARET EUSTACE,

Shorthand Reporter